

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re T.B. et al.,

Persons Coming Under the Juvenile
Court Law.

B217276

(Los Angeles County
Super. Ct. No. CK76109)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANGELINE S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn K. Martinez, Juvenile Court Referee. Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Principal Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

Mother, Angeline S., appeals from the juvenile court's disposition order, as well as the order denying her Welfare and Institutions Code¹ section 388 petition to modify the disposition order. She challenges the court's jurisdictional findings, the order removing her sons from her custody and the order denying her modification request without affording her a hearing. We affirm.

FACTS

Mother has two sons, T.B. (Josh) and Ezekiel S. Father, Alexander S., is married to Mother² and is the presumed father of both boys.³ He is not a party to this appeal.

On Monday, January 26, 2009, an officer from the Los Angeles Police Department detained 12-year-old Josh after he told his school counselor that Father had hit him in his eye with his fist because he had been playing video games with his brother. Josh's eye was red and swollen and a black circle had formed underneath.

Josh was "clearly frightened" when interviewed by the police officer. Josh told the officer that Father punched him in the face out of anger. Josh had a journal which his teacher was to sign when Josh completed his homework. Father was upset because Josh's counselor, rather than his teacher, signed his journal. This incident took place in the car en route to school. After Father hit Josh, he drove him back home and kept him home from school. The officer then interviewed the parents who advised him that Josh was injured playing basketball.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

² The couple married in 2000.

³ Robert H., whose whereabouts are unknown, is Josh's alleged father. Josh is unaware that Father is not his biological father.

An emergency response children's social worker (CSW) from the Department of Children and Family Services (DCFS) went to the police station, where she met with Mother, Father, Josh and Ezekiel. When the CSW informed Mother and Father of the allegations, both denied hitting Josh. The CSW then interviewed each parent separately. When asked how Josh injured his eye, Father said that Josh lied a lot and had been lying about his homework since the fifth grade. Father explained that Josh, who was in the sixth grade, had a daily journal. Father checked the journal every day to make sure it was signed by Josh's teacher. The CSW then inquired what happened to Josh's eye while at school on Friday, January 23, 2009. Father explained that Josh did not go to school that day. Father said that when Mother picked Josh up from school on Thursday, January 22, Josh told her he had been playing basketball with some boys after school when he accidentally was elbowed in the eye. Father denied hitting Josh. He claimed that he never hit his children. Rather, he took away privileges. The CSW then told Father the referral stated Father had hit Josh in the eye because Father did not believe that Josh's counselor signed Josh's daily journal. Father again denied hitting Josh. Father reiterated that Josh was hit in the eye while playing basketball at school.

The CSW similarly asked Mother what happened to Josh's eye. Like Father, rather than answering the question, Mother commented that Josh had not been turning in his homework since fifth grade. The CSW repeated her inquiry, to which Mother responded, "When I picked him up from school on Thursday, he told me that while he was playing basketball, he was hit in the eye with an elbow. He didn't know the boys he was playing with. He didn't know the name of the boy who hit him in the eye and he told me that he was okay and that he felt fine. I took him home and put some ice on it. His dad (Alexander) didn't hit him."

The CSW then spoke to Josh. She began her interview by asking Josh what happens when he gets in trouble. Josh said his privileges (TV and video games) are taken away. When the CSW asked what else happens, Josh said, "My dad will hit me with a belt." Josh was last hit with a belt in December when he lost his music book and lied

about it. Father hit him with a belt around three times, and Mother hit him with a belt as well. Josh could not remember when his Mother last hit him with a belt, though.

The CSW then turned to the issue of Josh's eye. When she asked Josh what happened, Josh did not respond immediately. Rather, he put his head down and began fidgeting with a toy. The CSW again asked Josh what happened to his eye. Josh whispered, "I don't want to get my dad in trouble."

Further questioning by the CSW revealed that Josh did not play basketball after school on Thursday, January 22, 2009. When the CSW again asked Josh about his eye, Josh whispered, "My dad hurt my eye." Josh further explained that Father had hit him in the eye with his fist because he had been playing video games with his brother when he wasn't supposed to. No one else was in the room when Father hit him in the eye. Mother told Josh to put ice on his eye; Father told Josh to stay home from school the next day, January 23, 2009.

The CSW also spoke with Ezekiel, who was six years old. Ezekiel said he did not get into trouble and did not know how Josh hurt his eye. Both children were taken into protective custody and placed in foster care. When the foster mother asked Josh what happened to his eye, Josh replied, "My dad hurt my eye with his fist."

On January 27, 2009, the CSW again spoke with Father who emphatically denied hitting Josh with a belt. The questioning continued after which Father stated, "I respect what you do. I know you're here to protect the children, but I know what you're trying to do. I'm not answering anymore of your questions. I want to talk to the Court's attorney. I'm not answering anymore of your questions."

During a monitored telephone conversation the same day, Father told Josh that the injury to his eye did not happen the way it was reported. The monitor reported that while Father spoke to Josh, Josh was "physically shaking." Father repeatedly told Josh to take care of his brother and that Josh's eye was not injured as reported.

On January 28, 2009, the CSW spoke to Josh's school counselor, who made the referral on behalf of Josh. The counselor related that she had received an anonymous call that disclosed Father had hit Josh in the eye. The counselor confronted Josh, who was

visibly afraid. Josh shook as he held his head down and asked, “What’s going to happen when my dad finds out[?]” Josh told the counselor that Father hit him in the eye because Father did not believe that a teacher had signed Josh’s daily journal. Father accused Josh of forging his teacher’s signature.

On January 29, 2009, DCFS filed a section 300 petition on behalf of Josh and Ezekiel.⁴ That same day, the juvenile court held a detention hearing. Both parents denied the allegations in the petition and asked that the children be returned to them. Counsel for Father represented to the court that Father stated “adamantly” that he “never ever, ever laid his a hand on his children.”

Josh’s counsel asked that the record reflect that Josh “has a very serious black eye.” Counsel expounded that “[t]he white portion of the eye itself, particularly on the outside, is very, very red. The skin underneath his eye is black and blue as well as some discoloration above his eye.” Counsel further noted that Josh “also has discoloration on his forehead on the right side of his forehead which I believe is also the result of physical abuse.”

The court identified the brothers as a sibling set. The court further stated that the brothers could not be returned to their parents, in that it was its responsibility to make decisions that will keep the boys safe. The court ordered that they both be detained and that their care and custody be vested with DCFS which was to provide family reunification services. The court granted parents monitored visitation with the boys in a DCFS office or with a DCFS approved monitor.

The court observed that “Josh is afraid of getting his father in trouble. He certainly does not want that to happen, and now that he knows what has happened, he is almost reluctant to say out loud what he believes to be the truth. He’s now whispering that his father hit him.” Given the report that during a monitored visit Father tried to persuade Josh that it did not happen, the court ordered both parents not to discuss the case

⁴ The petition also mistakenly referenced a third child named Joseph. The court dismissed this nonexistent child from the petition.

with the boys or within their earshot. The court directed DCFS to evaluate relatives for possible placement but expressly stated that DCFS had no discretion to release. And the boys were to reside together absent an emergency.

A report prepared by a dependency investigator (DI) in anticipation of the jurisdiction/disposition hearing stated that after returning from a visit with his parents, Josh cried and talked to his foster mother about the case. Josh said “he wants his father to stop hitting him[;] he’s afraid to go home and wants his mother to protect him or take his side.” Josh also informed his foster mother that once Father hit him in the stomach so hard that Josh urinated blood. Father also hit Josh on his hand and forehead.

The foster mother advised the DI that the parents talk to Josh about the case during visits. “According to [Josh] the parents are telling him to lie to the Department and that if he doesn’t lie he will be in the system longer. They are telling him that the foster mother isn’t going to take care of him or help him, that she is only doing this for money. And they are telling him that only his family wants the best for him.” Josh cries every night and has a difficult time after visits. Josh constantly wants to talk about the case. The foster mother also noted that it appears that Ezekiel has been told to answer “no” to everything. All the child says is “no.”

The DI also reported that she called Josh’s school counselor to inquire if Josh could have been injured at school while playing basketball. The counselor explained that she would not have called DCFS if Josh had been injured at school. The counselor did not think Josh was enrolled in the afterschool basketball program, but she said she would check with the basketball coach and get back to the DI.

The DI interviewed Father face-to-face on March 9, 2009. Father complained about DCFS’s handling of the case and “raised his voice in an intimidating manner.” Father also complained that Josh had a problem with lying. Father denied the allegations and then proceeded to tell the DI how to do her job. Father became very uncomfortable when the DI started to ask specific questions. Father asked to have his attorney present. He then proceeded to complain for 30 minutes about Josh and his problems with school

work and lying. Father made it a point to say that he does not treat Josh differently than his own son, Ezekiel.

The DI characterized Mother as “very motivated to reunify with her sons.” Mother regarded Josh as a “good boy” and stated she has “a very close relationship” with her sons.

The DI concluded that Josh and Ezekiel were not safe in their home. Josh stated that after Father hit him, “he was in pain, his eye stung and he could barely see out of it.” When Mother saw his injury she was “surprised” by the severity of the injury. After Father told her what happened, she told Josh to put ice on his eye so it would not get infected. The DI reported that Josh “is now scared to go home. He doesn’t trust that his mother will protect him as she has failed to do so in the past.” Josh “doesn’t believe that his parents have changed and would rather remain in out of home care than go home. The child is crying every night over this and has requested that the visits be shortened. He is not enjoying the visits and has disclosed that his parents are talking to him about the case and telling him to lie.”

The DI noted that Josh “has remained consistent in his statements. He disclosed the abuse to four individuals telling all four adults, the school counselor, the police officer, the emergency response CSW and the DI that Father hit him in the eye. Even his brother told the [DI] that [Josh] sustained a black eye because he lied. The parents are the only ones who contend that [Josh] was injured while playing basketball at school, however, they have not provided the Department with any individual who can corroborate their claim. They never reported the injury to the school and the school counselor informed the [DI] that the child did not sustain the injury at school hence the reason for the referral. The mother explained that she kept the child home from school to ‘remedy’ the black eye, however, she failed to take him to the doctor”

DCFS opined that suitable placement was “the only appropriate plan for the children as the parents continue to deny the abuse and have failed to accept responsibility and ask for help.” Given the problems with visitation, DCFS recommended that parents have only 2 monitored visits per week in a DCFS office with a DCFS approved monitor.

In a Last Minute Information for the Court report prepared for a March 13, 2009 hearing, the DI informed the court that Josh's school counselor had called to state that she spoke with the afterschool basketball coach who confirmed that Josh is not on the basketball team. In fact, Josh is not enrolled in any afterschool program. If he had been injured at school, he would have been sent to the office for an ice pack. Josh's parents never came to school to file a report.

The school counselor also related that on the day she called the police on Josh's behalf, Josh "was very afraid." He was worried about getting in trouble. Josh first told the counselor that he had been hit with a football while walking. When the counselor asked if that was the truth, Josh told the counselor that his father had hit him.

On March 25, 2009, the DI interviewed Father in the presence of his attorney. Father persisted in stating that Josh was injured on a Thursday while playing basketball at school. Father "somewhat smirked" when the DI asked if Josh's eye had swollen shut. Father denied that Josh's eye had swollen shut or bled. He explained that it was simply swollen. Father did not believe Josh required medical attention and that his black eye could be remedied at home. When asked why Josh did not go to school the next day, Father said he had a stomach ache.

The DI shared with Father that Josh does not want to return home and believes Mother will not protect him. When the DI asked Father why Josh would have such adverse feelings about returning home if he was injured at school, Father said Josh is "spoiled" and always gets his way. Father explained that during the two-week period prior to his injury, Josh had been getting into trouble and had lost his video game, iPod and TV privileges.

On April 16, 2009, the court once again ordered that there was to be no discussion of the case with the boys or within their earshot. The court noted that if such a discussion occurs during a visit, visitation is to cease pending the matter being walked on forthwith for noticed hearing.

In Last Minute Information for the Court reports filed on May 19, 2009, the day on which the adjudication hearing commenced, DCFS informed the court that at

approximately 6:15 p.m. on May 18, the foster mother left the CSW a message “stating that when the boys said goodbye to their mother after the monitored visit, the mother whispered to [Josh] ‘Don’t forget to lie tomorrow.’” The CSW attempted without success to contact the foster mother to obtain additional information. DCFS also advised the court that criminal charges had been filed against Father.

Josh testified at the adjudication hearing. He recounted that on the day he received his black eye, Father was driving him to school. Neither Mother nor Ezekiel was present. En route, Father became angry because Josh’s science teacher had not signed Josh’s “agenda.” Josh explained that his science teacher had refused to sign anything, in that he was disappointed because only nine students did their science homework. Josh thus went to his counselor to get his “agenda” signed. When Father saw that Josh’s counselor, rather than his science teacher, had signed his “agenda,” Father became angry. Josh admitted that when he was in the fifth grade he sometimes forged his teacher’s signature because he was afraid of his teacher. He would get in trouble when he got home.

Father told Josh that he was supposed to get his teacher’s signature and that he did not know if Josh was doing his homework if his counselor signed. Father lashed out and punched Josh in the eye. Josh was sitting in the front passenger seat at the time. Father drove Josh back home and told him to put ice on his eye. When Mother returned home from taking Ezekiel to school, Father told her he had hit Josh because his counselor, rather than his teacher, signed his journal. Later that day, Ezekiel saw Josh’s black eye and asked what happened. When Josh said he got hurt, Ezekiel said, “oh, by Dad”? Josh answered in the affirmative.

In the days and weeks prior to Father hitting him in the eye, Josh had not lost the privilege of using his iPod or video games.

Josh further testified about a conversation he had with his foster mother the previous night regarding his visit with Mother. Josh told his foster mother that Mother “whispered in my ear to not forget,” “[t]o lie.” When asked what Mother meant, Josh

replied, “Like maybe she meant to lie so we could go back home or maybe so that my dad won’t get in trouble.”

At the time of the adjudication hearing, Josh had been with his current foster mother for three months. Josh told his foster mother that his parents were “telling me stuff.” Foster mother said they needed to stop, in that it was against the rules.

When asked if he was afraid to return to his mother, Josh said he did not know. Although his foster mother told him his parents were going to classes, Josh questioned whether “it’s working because they are still trying to tell me stuff.” Specifically, his parents told him to lie so that he could come home and because they would get into a lot of trouble.

Josh acknowledged that he informed the CSW that Father “uses his knuckles and he hits me on my head.” Father had done so more than once and less than ten times. On one occasion, Josh’s third grade teacher asked Josh about a bump on his head. Josh told his teacher what his father told him to say—that he got hurt because he was running, tripped and fell on a toy. Josh had never seen Father thump Ezekiel or hit him with his hand or with a belt.

Josh believed his best friend’s mother called the school office to report that Josh had been hurt. When the school counselor first asked about his eye, Josh told her he had been hit by a football. Josh said this because he was afraid that he would get in trouble with his parents if he told the counselor that Father had hurt him.

Josh also acknowledged that he told other people, including the emergency response CSW, that he was elbowed in the eye by another kid while playing basketball, explaining that his parents had told him to say that. Josh further acknowledged that he also told the emergency response CSW that no one told him to say he was hurt while playing basketball. Josh acknowledged that he was lying “because my mom and dad told me to tell them that.”

Josh also recalled telling someone that he had been injured while playing video games. He did so because he felt “they are still trying to figure out how I got my black

eye and that maybe they thought the football and basketball thing doesn't really happen. So I just told them that I got hurt by the video games." This was not the truth.

Josh further acknowledged that he told the CSW that Father had hit him with a belt over his clothes but explained that had not really happened. Josh made it up since he thought he would be able to go home. Josh believed, albeit erroneously, that it was worse to get hit with a hand than with a belt.

After the evidentiary portion of the hearing, the juvenile court sustained counts a-1, b-1, b-3 and g-1 of the petition, as amended, and dismissed the remaining counts. The court found both boys to be persons described by section 300.

As amended and ultimately sustained, counts a-1 and b-1 state: "On or about 01/22/2009, and on prior occasions, [Mother's] male companion, Alexander S[.],^[5] father of the child Ezekiel, physically abused the child [Josh] by striking the child's left eye with [his] fists, inflicting bruising, swelling, and redness to the child's left eye. ~~On prior occasions, [Father] struck the child's buttocks with belts.~~ Such physical abuse was excessive and caused the child unreasonable pain and suffering. [Mother] ~~knew of [Father's] physical abuse of the child and~~ failed to protect the child. ~~The mother allowed [Father] to reside in the child's home and have unlimited access to the child.~~ Such physical abuse of the child [Josh] by [Father] and the mother's failure to protect the child endangers the child's physical and emotional health, safety and well-being, creates a detrimental home environment and placed [Josh and Ezekiel] at risk of physical and emotion harm, damage, danger, physical abuse and failure to protect."

Paragraphs b-3 and g-1 alleged that Josh's alleged father, Robert H., failed to provide Josh with the necessities of life, thereby endangering his physical and emotional health, safety and well being.

Turning next to disposition, the juvenile court declared Josh a dependent of the court under section 300, subdivisions (a), (b) and (g), and Ezekiel a dependent under

⁵ Father is not Mother's male companion. He is her husband.

subdivisions (a) and (b). The court further determined by clear and convincing evidence that substantial danger exists as to both boys and their removal from their parents' custody was required. Noting that both "parents remain in absolute denial that the physical abuse occurred," the court ordered both boys to be taken from their parents and committed to the care, custody and control of DCFS. The court ordered DCFS to provide the children and parents with family reunification services. The court directed the parents to complete a parenting program, individual counseling with a licensed therapist to address case issues, including anger management for Father, failure to protect for Mother and manipulation of children to lie repeatedly. The court also ordered counseling for the boys and monitored visits for both parents with a DCFS-approved monitor. The court further ordered DCFS to evaluate all proposed relatives and non-related extended family members as monitors for visitation.

Before concluding its proceedings, the juvenile court expressed its view that, although there were inconsistencies in the case, "the weight of the evidence is that Josh is clear and convincing to me and provides enough detail of being hit by his father that resulted in the black eye and that both parents, particularly his mother, have encouraged, reminded and manipulated Josh to lie about being hit by his father." The court noted that Josh had a motive to lie about the manner in which he received his injury, in that he was afraid of what would happen to him when Father found out he told the truth about Father hitting him. The court then commented that the parents were teaching their children that it was better to lie than to tell the truth and that it was more important to protect their parents than themselves. The court referred to Mother's comment to Josh on the eve of the proceedings to lie and agreed with counsel for DCFS that Mother's conduct was "despicable."

The court also noted that it "was very touched when Josh said he was hit with a belt because he thought that might be better than being hit with a hand." The court then addressed Josh: "Josh, it is not acceptable that a parent hits their child with a belt. That is wrong. Our laws say that parents can spank children on their butt to protect children. Not hard enough to leave a mark but a parent cannot hit with their fists. They cannot hit

with a belt. Anything like that. That's all wrong and I have ordered that your parents go to classes so that they can learn better ways to take care of you and your brother and nobody is going to hit you. I hope that the lesson learned here is that you've done the right thing by telling the truth. It is so important to learn to protect yourself as you grow up and your little brother, and one way to do that is to speak out if somebody is hurting you."

On June 11, 2009, less than four weeks after the juvenile court issued its dispositional order, Mother filed a request to change court order pursuant to section 388. In a nutshell, Mother had secured employment in Woodland Hills, making it difficult for her to make her Friday visits with her children at the DCFS offices in Torrance. Mother sought to have monitored visitation changed to the weekend. On June 19, the court clerk notified Mother by letter that her petition had been submitted to the hearing officer and denied. The letter specified that the children's best interests "would not be promoted by the proposed change of order." This appeal by Mother followed.

DISCUSSION

A. Jurisdictional Finding under Section 300, Subdivision (a)

A child comes within the jurisdiction of the juvenile court under subdivision (a) of section 300 if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." Mother challenges the sufficiency of the evidence to support the juvenile court's jurisdictional finding *as to her* that Josh and Ezekiel are persons described under section 300, subdivision (a).

As Mother acknowledges, however, "a jurisdictional finding against one parent is good against both." (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; accord, *In re A.S.* (2009) 180 Cal.App.4th 351, 361.) Stated otherwise, a child "is a dependent if the actions of either parent bring [the child] within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding,

which is to protect the child, rather than prosecute the parent. [Citation.]” (*Alysha S.*, *supra*, at p. 397.) In this case, Father’s conduct in physically abusing Josh indisputably brings Josh and Ezekiel within the jurisdiction of the juvenile court pursuant to subdivision (a) of section 300. Mother does not contend otherwise. As such, the juvenile court’s jurisdictional finding that Josh and Ezekiel are persons described under section 300, subdivision (a), stands.

Although crafted as a substantial evidence challenge, Mother’s real contention appears to be that the allegation in paragraph a-1 that she failed to protect Josh from the physical abuse inflicted by Father does not independently support a finding of jurisdiction under section 300, subdivision (a). Mother did not raise this objection below and did not demur to the petition. Consequently, she has forfeited this contention on appeal. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 82-83; *In re David H.* (2008) 165 Cal.App.4th 1626, 1637-1640; *In re James C.* (2002) 104 Cal.App.4th 470, 480-482; *In re S. O.* (2002) 103 Cal.App.4th 453, 459-460; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328-329; *contra*, *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1133; *In re Alysha S.*, *supra*, 51 Cal.App.4th at p. 397.)

B. Jurisdictional Finding Under Section 300, Subdivision (b)

Next, Mother challenges the juvenile court’s jurisdictional finding that the children are persons described under section 300, subdivision (b). She contends substantial evidence does not support the court’s findings that she failed to protect the children and that the children are at substantial risk. We disagree.

A jurisdictional finding made by the juvenile court will be upheld if it is supported by substantial evidence. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) Evidence is substantial if it is reasonable, credible and of solid value. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) In assessing the sufficiency of the evidence, we review the entire record, resolve all evidentiary conflicts in favor of the finding and draw all reasonable inferences in support of the judgment. (*Ibid.*)

A child comes within the jurisdiction of the juvenile court under subdivision (b) of section 300 if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment”

Prior to sustaining the petition, the juvenile court made various amendments to counts a-1 and b-1. Based upon Josh’s testimony that Father never hit him with a belt, the juvenile court struck the allegation that “[o]n prior occasions, [Father] struck the child’s buttocks with belts.” The court further struck the allegation that Mother knew of Father’s physical abuse of the child and failed to protect the child, by deleting the language that Mother knew of Father’s physical abuse, such that the allegation read only that Mother failed to protect the child. The court also struck the allegation that Mother allowed Father “to reside in the child’s home and have unlimited access to the child.” As a result of these revisions, Mother further asserts that the juvenile court absolved her “of any responsibility for the harm or risk of harm to Josh and Ezekiel.” In her view, the juvenile court’s “simple finding that [she] failed to protect the children is not sufficient to sustain the petition, as there was no defined or specifically stated harm to the children.” We absolutely disagree.

Contrary to Mother’s assertion, the juvenile court did not absolve her of responsibility for the harm or risk of harm to her sons. The court in no uncertain terms found that Mother failed to protect Josh from Father’s physical abuse in striking Josh in the eye with a fist. While it is true that Mother was not present when the abuse occurred, she subsequently learned about the abuse shortly after it occurred when Father returned home with Josh after leaving to take Josh to school. At this juncture, Mother’s culpability commenced. She failed to seek medical treatment for Josh’s injury, telling him instead to put ice on his eye. Thereafter, when the police and DCFS became

involved, rather than stand up for Josh, Mother sacrificed Josh's well-being in order to protect her husband. Mother lied about the abuse and pressured Josh to lie about the abuse. In so doing, Mother truly failed to protect Josh and placed Josh and Ezekiel at substantial risk of future physical abuse at the hands of Father. Mother's conduct was despicable and provides more than ample support for the court's finding that Josh and Ezekiel are persons described under subdivision (b) of section 300. (*In re Tania S.*, *supra*, 5 Cal.App.4th at p. 733.)

That Ezekiel had never been physically abused by Father and was not present when Father struck Josh in the eye provides Mother no solace. Ezekiel, like Mother, learned about the abuse after the fact. Ezekiel returned home from school, saw Josh's black eye and asked what happened. When Josh said he got hurt, Ezekiel said, "oh, by Dad"? Josh answered in the affirmative. Ezekiel's response is quite telling and reflects his knowledge that Father hit Josh in the past.

The bottom line is that Mother failed to stand up for Josh and place his needs above those of her husband when Josh needed her most. Mother never acknowledged that Father physically abused Josh, violated court orders not to talk to Josh about the case, and repeatedly pressured Josh to lie about the abuse so he could come home, causing Josh additional stress. Mother's failure to protect Josh unquestionably placed both Josh and Ezekiel at substantial risk of serious physical harm in the future.

Mother also takes issue with DCFS's failure to confirm that Father no longer was living in the family residence at the time of the adjudication hearing. Mother maintains that with Father out of the home "there was no longer any concern regarding [her] ability to protect the children or any fear of their father's future physical discipline." We are not convinced. Even if we were to assume that Father was not living in the family residence at the time of the adjudication hearing, the children still would have been at substantial risk of danger due to risk in light of Mother's failure to acknowledge Father's physical abuse. Moreover, there were no assurances that Father would not later return home. In fact, a section 388 petition filed by Mother on October 29, 2009, during the pendency of

this appeal, states that Father had returned home.⁶ Thus, it appears that Father's decision to move out of the family residence was a temporary one at best and perhaps a ploy intended to avoid removal of the children.

C. Removal Order

The juvenile court is empowered to remove a dependent child from the physical custody of the parent or parents with whom the child resided when the section 300 petition was filed if the court finds clear and convincing evidence that there is a substantial danger or risk of danger to a child's physical or emotional health if the child is returned home and there are no reasonable means to protect the child without removal. (§ 361, subd. (c)(1).) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462.) On appeal, a removal order will be upheld if it is supported by substantial evidence. (*Id.* at p. 463.)

Mother challenges the dispositional order removing her two sons from her care and custody, contending the juvenile court removed her children without considering alternatives to removal. The court's removal order is unassailable.

The same appalling conduct on Mother's part that justified the juvenile court in sustaining the petition, as amended, equally justified the removal of her children. Mother lied to law enforcement and DCFS about how Josh was injured, and she pressured Josh to do the same. In so doing, she sacrificed Josh's well-being to protect herself and her husband, obviously clueless to the additional pain she caused Josh in the process. Under these circumstances, there were no reasonable alternatives to removal.

That Ezekiel had not been physically abused is inconsequential. "[A] child does not need to be harmed before being removed from his parents' custody. One of the goals of dependency is to protect a child before the harm takes place." (*In re Cole C.* (2009)

⁶ We have taken judicial notice of this document. (Evid. Code, § 452, subd. (c).)

174 Cal.App.4th 900, 918.) The court, therefore, reasonably inferred based on the particular circumstances of this case that Josh, as well as Ezekiel, would be at risk of harm if returned to Mother's care. The court's decision to remove them from Mother's custody was "consistent with the purpose of section 361, subdivision (c), which is to prevent harm to children." (*Ibid.*) Under these circumstances, removal was required to protect Josh and Ezekiel. Nothing less would have sufficed. (*Ibid.*)

D. Section 388 Petition

Finally, Mother contends the juvenile court abused its discretion in summarily denying her section 388 petition without a hearing. We disagree.

Pursuant to section 388, "[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) The court shall order that a hearing be held on the petition "[i]f it appears that the best interests of the child may be promoted by the proposed change of order." (*Id.*, subd. (d).) A section 388 petition is to be construed liberally in favor of its sufficiency. (*In re D.R.* (2007) 155 Cal.App.4th 480, 487.)

Following its review of a section 388 petition, the juvenile court has two alternatives. It may hold a hearing on the petition, or it may summarily deny it. (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) To avoid a summary denial, a parent seeking a change of order must make a prima facie showing of facts that would justify the granting of the petition if the evidence submitted in support of the petition was believed. (*Ibid.*; *In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) More specifically, the petitioner must make a prima facie showing of changed circumstances and that the best interests of the child would be promoted by the proposed modification. (*In re D.R.*, *supra*, 155 Cal.App.4th at p. 487.) If the petition demonstrates that the best interests of the child would be promoted by holding a hearing, the court must order a hearing. (*In re*

Lesly G., *supra*, at p. 912; *In re Heather P.* (1989) 209 Cal.App.3d 886, 891.) If, however, the petition does not state a change of circumstances or new evidence that might justify modifying an order, the court may deny the petition summarily. (*In re Lesly G.*, *supra*, at p. 912; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450.)

The juvenile court's decision to deny a section 388 petition without a hearing will be reviewed for an abuse of discretion. (*In re D.R.*, *supra*, 155 Cal.App.4th at p. 487.) We will uphold a summary denial of the petition as long as the juvenile court did not exceed the bounds of reason. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) If two or more inferences may reasonably be deduced from the facts, we will not substitute our decision for that of the juvenile court. (*Ibid.*)

The juvenile court issued its dispositional order on May 19, 2009. Less than four weeks later, on June 11, Mother filed a section 388 petition. Therein, Mother asked the court to modify its May 19, 2009 order granting her monitored visitation with a DCFS-approved monitor and directing DCFS to evaluate relatives and friends for the position of monitor. Since the dispositional hearing, Mother had secured employment in Woodland Hills, making it difficult to visit the children in Torrance on Friday afternoons. Mother first contacted DCFS in an effort to make different visitation arrangements. DCFS informed Mother that it did not have monitors for weekend visits and it had been unable to clear any of Mother's proffered relatives to serve as a monitor for the visits.

Although Mother's individual circumstances had changed, as the juvenile court determined, she failed to make a *prima facie* showing that the modification she requested was in the best interests of the children. First of all, Mother's visits with Josh and Ezekiel were being monitored by DCFS at their offices in Torrance. Mother wanted weekend visits, which simply could not be provided by DCFS, in that it did not have the staff to monitor weekend visits. Although Mother had provided DCFS with the names of family members whom she hoped DCFS would approve to be monitors, her proposed monitors were not approved. Inasmuch as the contents of Mother's own petition and her supporting declaration established that changes she requested were not feasible, they could not possibly be in the best interests of the boys. Under these circumstances, we

conclude that the juvenile court acted well within its discretion in summarily denying Mother's section 388 petition. (*In re D.R.*, *supra*, 155 Cal.App.4th at p. 487.)⁷

DISPOSITION

The orders are affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

⁷ In any event, we note that subsequent events in this dependency proceeding have rendered Mother's challenge to the propriety of the order denying her section 388 petition without a hearing moot. (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054-1055.) On October 29, 2009, during the pendency of this appeal, Mother filed another request for modification pursuant to section 388. Therein, Mother stated under penalty of perjury that beginning in August 2009, she enjoyed unmonitored visits two to three times per week. The frequency of unmonitored visits was increased to five times per week in September 2009. Mother also enjoys overnight weekend visits with both children.